Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
CONNECT AMERICA FUND	)	**WC Docket No. 10-90**
	)	
A NATIONAL BROADBAND PLAN FOR OUR FUTURE	)	**GN Docket No. 09-51**
	)	
ESTABLISHING JUST AND REASONABLE RATES FOR LOCAL EXCHANGE CARRIERS	)	**WC Docket No. 07-135**
	)	
HIGH-COST UNIVERSAL SERVICE SUPPORT	)	**WC Docket No. 05-337**
	)	
DEVELOPING A UNIFIED INTERCARRIER COMPENSATION REGIME	)	**CC Docket No. 01-92**
	)	
FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE	)	**CC Docket No. 96-45**
	)	
LIFELINE AND LINK-UP	)	**WC Docket No. 03-109**
	)	
UNIVERSAL SERVICE REFORM – MOBILITY FUND	)	**WT Docket No. 10-208**

COMMENTS OF THE INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

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Table of Contents

Summary

ITTA urges the Commission to take into account considerations of practicality, fairness and efficiency as the Commission considers implementation of the Connect America Fund ("CAF"). To a great extent, existing regulations are sufficient to achieve the Commission's public interest goals. Existing broadband reporting obligations imposed by the *Open Internet Order* and FCC Form 477 are sufficient to ensure compliance with broadband performance requirements in areas where CAF recipients receive support. Because these obligations provide the public and regulators with detailed information regarding the broadband services offered by specific providers in specific locations, including speed and latency measurements, it should be sufficient for CAF recipients to certify their broadband service offerings meet the minimum performance metrics for purposes of eligibility for CAF funding.

Similarly, existing regulatory safeguards, such as the ETC designation process, ensure accountability of CAF recipients. The Commission's proposal to adopt additional measures, such as requiring ETCs to issue a letter of credit, is unduly burdensome and would have a negative impact on the business operations of CAF recipients. The ETC process provides assurance that entities receiving CAF money are financially viable and using the funds as intended. In addition, the Commission's existing investigative and complaint processes are sufficient to enforce the various requirements applicable to CAF recipients. The adoption of draconian penalties, such as denial of certification or recovery of past support, would undermine the regulatory certainty that is necessary for significant investment in the deployment of voice and broadband-capable networks in high-cost areas.

The Commission also should ensure that its rules are implemented in a technologically and competitively-neutral manner. To the extent that CAF recipients may utilize any technology

to provide broadband service in CAF-supported areas, the benchmarks the Commission relies on to determine reasonable comparability of such services for universal service purposes should be the same, regardless of the technology deployed. Similarly, there is no rationale for treating recipients of model-derived funding and those that receive funding through the competitive bidding process differently. The support periods, performance obligations and deployment deadlines should be the same, regardless of the funding mechanism used. In addition, parties should be qualified as ETCs before participating in the competitive bidding process. Incumbents must comply with these procedures, and requiring new CAF participants to become certified would provide some assurance that they will use the funding responsibly and consistent with their public interest obligations.

Further, to ensure maximum flexibility for providers and facilitate participation in the competitive bidding process by as many qualified entities as possible, the Commission should permit competitive bidders to partner with other providers to meet their public interest obligations, allow ETCs that decline statewide funding to participate in the competitive bidding process, and refrain from requiring CAF recipients to finance a portion of the build-out in CAF-supported areas with private funds.

The Commission should focus its attention in this proceeding on issues directly related to universal service reform. The Commission should not address IP interconnection in this docket, as it is considering this issue in a separate proceeding. Moreover, any measures it may take regarding IP interconnection at this time would be premature, given that the industry is in the process of developing comprehensive IP interconnection guidelines. Should the Commission nonetheless adopt IP interconnection rules, it must ensure that such obligations would not mandate network upgrades and that the same requirements apply to all providers.

Finally, the service obligations required of CAF recipients should be proportional to the amount of CAF support received. Thus, should CAF support be completely eliminated, a provider's voice service obligations also should cease. Where support is reduced, ETCs should be allowed to seek relief from their voice service obligations on a case-by-case basis. This approach recognizes the substantial investment made by such providers and that it may not be economically feasible to continue service in areas where they are no longer receiving support. It also is consistent with the constitutional principle that regulated entities should have a reasonable opportunity to earn a fair return on their investment.

In sum, the Commission should not adopt burdensome new requirements for CAF recipients when existing regulations already meet the objectives the Commission seeks to achieve. Moreover, any regulations the Commission does adopt must be competitively and technologically-neutral and provide maximum flexibility for CAF recipients so as to encourage their participation in the CAF and further the Commission's goal of achieving universal broadband access for all Americans.

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COMMENTS OF THE INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

The Independent Telephone & Telecommunications Alliance ("ITTA") hereby submits its Comments with respect to the November 18, 2011 *Further Notice of Proposed Rulemaking* ("*USF FNPRM*") issued by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceedings.[1] The items addressed in the *USF FNPRM*,

[1] *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51, WT Docket No. 10-208, FCC 11-161, Report and Order and Further Notice of Proposed Rulemaking (rel. Nov. 18, 2011) ("*Order*" or "*USF FNPRM*," as appropriate).

on which ITTA provides input below, concern the Commission's implementation of various federal Universal Service Fund reforms adopted in a companion *Report and Order* (the "*Order*") released on the same date.[2]

I. PRACTICALITY, FAIRNESS, AND EFFICIENCY SHOULD BE TAKEN INTO ACCOUNT IN SETTING THE OBLIGATIONS OF CAF RECIPIENTS

In the *USF FNPRM*, the Commission requests comment on the implementation of various public interest obligations imposed on Connect America Fund ("CAF") recipients in the *Order*, including certain reporting, interconnection, and service obligations.[3] ITTA urges the Commission to keep in mind interests of practicality, fairness, and efficiency as it considers the scope of such obligations. As explained below, the Commission should ensure that any regulations imposed on CAF recipients apply equally to all service providers and are not unduly burdensome or duplicative of obligations with which regulated entities must already comply. Proceeding in this manner would encourage broad-based participation in the CAF and further the Commission's goals of expanding voice and broadband availability as expeditiously and to as many consumers as possible.

A. Existing Broadband Reporting Obligations Are Sufficient To Ensure Compliance With Broadband Service Requirements In CAF-Supported Areas

The *Order* requires CAF recipients to comply with certain broadband performance metrics as a condition of receiving funding. To ensure that CAF recipients are meeting these requirements, they must measure the speed and latency of their broadband services and report the results to USAC on an annual basis.[4] The *USF FNPRM* poses several questions regarding the

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[2] *See* n. 1, *supra*.

[3] *USF FNPRM* at Sections XVII.A, F-G.

[4] *Order* at ¶ 109.

nature and scope of such reporting, including whether the Commission should adopt a uniform methodology for measuring broadband performance and, if so, what reporting format should be used.[5] The Commission also asks whether the broadband performance data reported to USAC should be auditable in order to confirm that recipients are providing broadband at the required speeds and whether providers also should be required to submit underlying raw data to USAC.[6]

The Commission has existing reporting requirements that require disclosure of the broadband performance metrics imposed in the *Order*. ITTA maintains that those obligations are sufficient to ensure that providers are meeting the necessary speed and latency requirements in service areas where they receive CAF support. The Commission's *Open Internet Order* rules place a variety of obligations on broadband providers, including the requirement to make network performance characteristics available to the public.[7] To satisfy this obligation, providers are expected to disclose actual and expected speed and latency metrics to provide transparency regarding the capability of their services to end users, the Commission, and other parties.[8] The FCC's disclosure rule requires all broadband providers to publicly disclose performance characteristics as well as network management practices and commercial terms (collectively referred to as "network management practices") on their websites and at their point-of-sale locations.[9]

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[5] *USF FNPRM* at ¶¶ 1014-15.

[6] *Id.* at ¶¶ 1015-16.

[7] *In the Matter of Preserving the Open Internet; Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, FCC 10-201, Report and Order (rel. Dec. 23, 2010) ("*Open Internet Order*").

[8] *Id.* at ¶ 56.

[9] *Id.* at ¶¶ 53-61.

Similarly, the Commission collects detailed broadband data on FCC Form 477 for purposes of evaluating the extent of broadband deployment in connection with its obligations under Section 706 of the Act to "determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion."[10] Among other Form 477 requirements, providers must disclose their broadband service availability broken down by census tract and download/upload speeds.[11]

Given that broadband providers already must comply with extensive disclosure obligations to ensure that both the public and regulators have access to detailed information regarding their broadband service offerings, it should be sufficient for CAF recipients to certify that their broadband services meet the minimum performance metrics required by the *Order* when reporting to USAC.[12]

The Commission should bear in mind that additional reporting obligations translate to additional costs for regulated entities. To the extent the Commission desires to encourage broad participation in the CAF, including, importantly, by smaller companies, it should be cognizant of

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[10] 47 U.S.C. § 157 nt (incorporating section 706 of the Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996)).

[11] *In the Matter of Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, FCC 08-89, Report and Order (rel. June 12, 2008).

[12] To the extent broadband providers are required to retain the results of such performance testing under existing Commission rules, it would be reasonable to require them to produce such data in the event of an audit by USAC or a state commission to confirm that they are providing broadband services at the speeds required under the *Order*.

minimizing the burdens on funding recipients, particularly when existing requirements already meet the objectives it seeks to achieve.[13]

B. Benchmarks For Reasonable Comparability of Voice and Broadband Services Should Be the Same For Both Fixed and Mobile Services

The *Order* directs FCC staff to develop and conduct a survey of voice and broadband rates in both urban and rural areas for purposes of determining reasonable comparability of such rates for universal service purposes.[14] With respect to the components of the survey, the Commission asks whether it should collect separate data on fixed and mobile services and whether fixed and mobile services should have different reasonable comparability benchmarks for voice and/or broadband services.[15]

The Commission's rules should be competitively neutral in all respects. To the extent Phase II CAF recipients are free to meet the required service commitments using fixed wireline, fixed wireless or mobile wireless technology (or any combination thereof), all supported services should be subject to the same comparability benchmarks. To determine otherwise risks unnecessarily and unjustly favoring one technology (or class of service provider) over others.[16]

C. The Commission Should Refrain From Adopting IP Interconnection Rules In This Proceeding

The *USF FNPRM* requests comment on whether CAF recipients should be required to offer IP-to-IP interconnection for voice service, and if so, what the nature and scope of such

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[13] ITTA notes that out of concern for the potential burdens associated with its *Open Internet Order* requirements, the Commission took care to refrain from adopting a standardized reporting format and instead adopted basic guidelines to ensure that it "g[ave] broadband providers some flexibility" in meeting their reporting obligations. *Open Internet Order* at ¶¶ 58-59.

[14] *Order* at ¶¶ 113-14.

[15] *USF FNPRM* at ¶ 1019.

[16] ITTA takes no position regarding whether the rate comparability benchmark should be different for universal service funding distributed through the federal Mobility Fund.

obligation should be and how it should be enforced.[17] As ITTA pointed out in its previous comments, the Commission should focus its attention and limited resources in this docket on the critical and complex issues directly related to universal service reforms that require immediate Commission action.[18] The Commission currently is considering IP interconnection-related issues in a separate docket, which is a more appropriate forum to address these matters.[19]

Moreover, any steps the Commission may take to address IP interconnection in this or any other proceeding would be premature in light of independent industry efforts to develop comprehensive guidelines to govern IP-to-IP interconnection for all providers.[20] Adopting regulatory mandates before industry standards have been established could force providers to develop a patchwork of carrier-by-carrier technical requirements. And given that any standards adopted by the Commission would remain in place only until broader industry guidelines become effective, the effort to address IP interconnection in this rulemaking would be an inefficient diversion of Commission resources away from broadband deployment-related pursuits for no long-term benefit. As ITTA and others have urged, at this time the Commission should

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[17] *USF FNPRM* at ¶ 1028.

[18] Reply Comments of the Independent Telephone & Telecommunications Alliance, *et al*., WC Docket Nos. 10-90, *et al*. (filed Sept. 6, 2011), at 5-7.

[19] *In the Matter of Petition for Declaratory Ruling that tw telecom inc. has the Right to Direct IP-to-IP Interconnection Pursuant to Section 251(c)(2) of the Communications Act, as Amended, for the Transmission and Routing of tw telecom's Facilities-Based VoIP Services and IP-in-the-Middle Voice Service*, Public Notice, WC Docket No. 11-119, DA 11-1198 (rel. July 15, 2011).

[20] Specifically, the industry is working, through an Alliance for Telecommunications Industry Solutions ("ATIS") Task Force, on "developing an IP network-to-network interconnection guideline … that will provide physical configuration, protocol suite profile, operational information to be exchanged between carriers, and test suites to support conformance and interoperability testing." Comments of Verizon and Verizon Wireless, WC Docket No. 11-119 (filed Aug. 15, 2011), at 5.

continue to rely on marketplace solutions, rather than heavy-handed regulation, to govern the PSTN-to-IP transition and interconnection arrangements among IP-based service providers.[21]

Should the Commission nonetheless decide to adopt IP interconnection requirements in this proceeding, it must make clear that such obligations would not mandate network upgrades. There should be no obligation for CAF recipients to interconnect on an IP basis when doing so would require the deployment of new technology to replace existing equipment and/or facilities that lack such capability. Such an obligation would be exceedingly costly to implement and contrary to established legal principles. As the U.S. Court of Appeals for the Eighth Circuit has held, the Commission's statutory authority relating to interconnection is limited in that the FCC can require access "only to an incumbent LEC's *existing* network – not to a yet unbuilt superior one."[22] Thus, no IP interconnection obligations should attach where a CAF recipient has not deployed IP equipment in its network.

Furthermore, any IP interconnection regulations the Commission may adopt should apply to all network providers, not just incumbent local exchange carriers ("ILECs"). Any regulatory obligations in Sections 251 and 252 of the Communications Act[23] that apply exclusively to one type of service provider (e.g., Section 251(c), which applies only to ILECs) therefore would be an inappropriate basis for any IP interconnection rules adopted by the Commission. A regulatory backstop is needed to address interconnection disputes should they arise, however. There is no

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[21] *See, e.g.*, Reply Comments of the Independent Telephone & Telecommunications Alliance, WC Docket Nos. 10-90, *et al*. at 2, 8-16 (filed May 23, 2011) ("the market should govern how… providers convert to IP networks); comments of Verizon and Verizon Wireless, WC Docket No. 11-119 (filed Aug. 15, 2011), at 1-8; AT&T Reply Comments, WC Docket Nos. 10-90, *et al*. (filed May 23, 2011), at 2, 8-16.

[22] *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997).

[23] 47 U.S.C. §§ 251, 252.

need for the Commission to establish a new complaint process for such disputes. Rather, the Commission's existing complaint procedures and enforcement mechanisms are sufficient to allow parties to obtain relief in the event they are unable to resolve interconnection disputes privately.

The Commission also asks whether CAF recipients should be required to make interconnection points and backhaul capacity available so that unserved communities can deploy their own broadband networks.[24] ITTA submits that the Commission should refrain from adopting such requirements and leave these arrangements to private negotiations. However, to the extent that the FCC nonetheless imposes such mandates, it must ensure that CAF recipients are permitted to charge market-based rates in connection with such obligations.

D. Carrier Service Obligations Should Correspond To The Amount of CAF Support Received

The Commission seeks comment on proper adjustments to eligible telecommunications carriers' ("ETCs") existing service obligations as it shifts funding to support for broadband deployment. In CAF Phase II, there are certain situations where an ETC may lose some or all of its ongoing federal universal service support. Support for a price cap ILEC will be eliminated in census blocks where an unsubsidized competitor offers voice and broadband services, support for an ILEC that declines to undertake a state-level service commitment will be eliminated, support for an incumbent rate-of-return carrier will be phased out in study areas where an unsubsidized competitor(s) offers voice and broadband service meeting certain criteria, and support for competitive ETCs that receive support under the Identical Support rule will be phased down over time. The Commission seeks comment on whether the reduction or

[24] *USF FNPRM* at ¶ 1029.

elimination of support to an ETC in a service area should be accompanied by a relaxation of the carrier's voice service obligations, and if so, what framework would be appropriate for addressing such issues.[25]

The elimination of ongoing federal universal service support should correspond to an elimination of a carrier's voice service obligations in the geographic area in which the ETC was receiving such support. Incumbent ETCs have constructed substantial broadband networks in high-cost areas with the assistance of and in reliance on federal USF dollars. In many cases, without ongoing support, the continued maintenance and expansion of those networks would not be economically feasible. It would be unreasonable, and a potential constitutional violation, for the FCC to impose unfunded mandates in the form of continued service obligations on those carriers when it has withdrawn funding necessary to support those obligations.

Historically, regulated service offerings have been provided based on a commitment by regulators to allow the service provider a reasonable opportunity to earn a fair return on its investment.[26] Although the Commission has the authority to alter or eliminate support programs and there is no constitutional right to guaranteed government-subsidized profits, the Commission is bound by the Takings Clause of the U.S. Constitution to ensure that regulated entities are afforded the opportunity to earn a reasonable rate of return based on regulated assets and costs.[27] In light of these concerns, it is critical that carrier service obligations be tied to available funding. When such funding is no longer available, any associated regulatory burdens also should cease.

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[25] *Id.* at ¶ 1095.

[26] *See Federal Power Comm. v. Hope Natural Gas Co*., 320 U.S. 591, 600-03 (1944); *see also Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786, ¶ 127 (1990).

[27] *See Duquesne Light Co. v. Barasch*, 488 U.S. 299, 315 (1989).

In situations where there is a reduction in support, ETCs should be allowed to seek relief from voice service obligations from the Commission on a case-by-case basis. An ETC experiencing decreased support should have the right to demonstrate that it is no longer equitable for the Commission to require compliance with carrier service obligations in all or part of a particular service area based on the amount of support the ETC is continuing to receive. A state that wishes to continue voice service obligations on ETCs in situations where the FCC has lifted such obligations should be free to do so as long as the state establishes and maintains a state-level universal service fund to assist ETCs in meeting such obligations. The state also must establish appropriate mechanisms for an ETC to seek relief from state-imposed obligations in the event it is not equitable for the carrier to continue to comply with such obligations.

E. Existing Commission Processes and Enforcement Measures Are Sufficient To Ensure Accountability of CAF Recipients

The Commission seeks comment regarding whether to adopt certain measures to ensure greater accountability by recipients of CAF funding. Several questions posed in the *FNPRM* concern an irrevocable standby letter of credit ("LOC") obligation. In particular, the Commission asks whether it should require all ETCs to obtain a LOC as a condition of receiving CAF support, whether ETCs that receive less than a specified amount of funding should be exempted from the requirement to obtain a LOC, what amount of LOC is necessary to ensure compliance with public interest obligations, and how long the LOC should remain in place.[28]

ITTA maintains that the Commission should not require ETCs to obtain an irrevocable standby LOC in order to obtain CAF support. This requirement is both unduly burdensome and overly broad given that the objectives sought to be achieved by this obligation are met through

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[28] *USF FNPRM* at ¶¶ 1105, 1107-08.

other measures – including, importantly, the ETC designation process. From a practical standpoint, companies may have limited capacity to issue LOCs under existing credit agreements. A federal regulatory obligation to add a LOC to a company's portfolio would restrict its flexibility to conduct its business because it would reduce the company's ability to transact with commercial entities that require a LOC.

Furthermore, issuing a LOC is expensive, typically involving both an upfront fee and an ongoing maintenance fee, which reduces cash flow and impacts financial covenants to which the company is subject. For publicly-traded companies, LOCs are viewed as outstanding debt by investors and analysts, which affects the company's debt ratings and likelihood of default. Finally, LOCs reduce a company's liquidity as every dollar committed to a LOC reduces availability under the company's revolving credit facility.

Given these constraints, most companies seek an alternative to issuing a LOC, and terminate existing LOCs when possible. In short, the burdens associated with the Commission's proposed LOC requirement cannot be justified, particularly when the ETC designation process constitutes a much a more reasonable accountability mechanism.

Carriers seeking high-cost universal service support must first be designated as ETCs before they are eligible to receive federal USF funding. Under existing rules, states have primary responsibility for designating service providers as ETCs, although the FCC also has jurisdiction to designate ETCs in certain circumstances – e.g., when a state declines or refuses to rule on an application or when the application relates to ETC designation for tribal lands. While state ETC designation requirements vary widely, each state has processes and procedures in place that it believes fulfill its obligation to ensure that companies receiving universal service

support are financially viable and are using those funds for their intended purpose.[29] These requirements are sufficient to ensure that ETCs are qualified to receive CAF support and that they are accountable for meeting the public interest obligations associated with receipt of such support.

Moreover, to be designated as an ETC by the FCC, a carrier must provide a five-year plan showing how universal service support will be used to improve its coverage, service quality, or capacity in each wire center it seeks designation; (2) demonstrate its ability to remain functional in emergency situations; (3) demonstrate that it will satisfy consumer protection and service quality standards; (4) offer local usage plans comparable to those offered by the incumbent carrier in the areas for which it seeks designation; and (5) acknowledge that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations.[30]

The Commission has concluded that "existing requirements for ETC designation, along with the [five] criteria [listed] above, will require an ETC applicant to show that it has significant financial resources. Specifically, an applicant must demonstrate the ability to offer all the supported service in the designated area by submitting detailed commitments to build-out facilities, abide by service quality standards, and provide services throughout its designated service area upon request."[31] In addition, an ETC has ongoing reporting obligations to ensure

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[29] In fact, some state requirements relating to ETC status may be more stringent than federal requirements. For example, in Illinois, if a company that has received ETC destination shows evidence that it is not financially viable (e.g., through a declaration of bankruptcy), the state will require the company to set aside a certain amount of its operating budget to ensure that it can continue to meet its universal service obligations.

[30] *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 05-46, Report and Order, ¶ 2 (rel. Mar. 17, 2005) ("*ETC Designation Order*").

[31] *Id.* at ¶ 37.

that support continues to be used for its intended purposes, including the obligation to provide progress updates on its five-year service quality improvement plan that must include detailed progress maps and an explanation of how support received for a particular wire center was used in furtherance of the plan.[32]

In short, state and federal authorities have determined that the criteria for ETC status create a rigorous ETC designation process that ensures the long-term sustainability of the universal service fund.[33] These extensive requirements for ETC designation are more than sufficient to provide assurance to the Commission of a potential CAF recipient's financial qualifications and "that it has committed sufficient financial resources to complying with the public interest obligations required under the Commission's rules" without a separate obligation to obtain a LOC.[34]

The Commission also asks whether the imposition of certain penalties would be useful as an accountability measure, including whether revocation of a recipient's ETC designation, denial of certification, and/or recovery of past support amounts would be appropriate alternative remedies for failure to comply with the public interest.[35] The Commission should refrain from adopting any of the proposed penalties as they would be counterproductive to the Commission's goals of facilitating rapid broadband deployment to unserved areas.

CAF recipients need regulatory certainty in order to make the necessary investment to deploy voice and broadband-capable networks in high-cost areas. Such investment already entails a certain level of risk that would substantially increase if a CAF recipient were required,

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[32] *Id.* at ¶ 69.

[33] *See id.* at ¶ 2.

[34] *USF FNPRM* at ¶ 1105.

[35] *Id.* at ¶ 1110.

for example, to return past support for an unintentional violation of the Commission's rules. Indeed, if faced with the possibility that the Commission might impose such draconian measures, some potential CAF recipients could decide to forgo CAF support altogether. Rather than adopting the penalties described above, the Commission should continue to rely on existing enforcement mechanisms, including its investigative and complaint processes, to police and punish violations of its rules.

II. THE COMPETITIVE BIDDING PROCESS FOR PRICE CAP CARRIER SUPPORT SHOULD ENSURE MAXIMUM FLEXIBILITY AND A LEVEL PLAYING FIELD FOR ALL CAF RECIPIENTS

The *Order* establishes a framework for distribution of Phase II CAF support to price cap carriers using a combination of a forward-looking broadband cost model and competitive bidding. The competitive bidding process is triggered when a price cap carrier declines its state-level commitment to provide broadband service based on the amount of support determined to be sufficient for such purposes under the cost model. [36] In the *USF FNPRM*, the Commission seeks comment on several aspects of the competitive bidding process. Several of these proposals constitute sound public policy and should be adopted by the Commission. They would provide maximum flexibility for CAF recipients in moving toward the Commission's goal of universal broadband access for all Americans.

The Commission asks whether ETCs that receive support through competitive bidding should be permitted to partner with other providers to meet their public interest obligations.[37] ITTA maintains that the correct answer is yes. Allowing this flexibility would be consistent with

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[36] *See id.* at ¶ 1198.

[37] *Id.* at ¶ 1196.

the Commission's objectives by making it possible for recipients to provide voice and broadband service to unserved areas in situations where they may not be able to do so on their own.

The Commission also asks whether ILEC ETCs that decline state-level support should be eligible to participate in the auction process.[38] Again, the answer should be yes. This rule would ensure that as many ETCs as possible are able to compete for funding and that the entity that may be best suited to deploy broadband to a particular unserved area is not prevented from participating by virtue of the fact that it chose not to accept a statewide deployment commitment. There may be sound business reasons why an ILEC ETC would decline to accept statewide funding. That ILEC should not be penalized from participating in the auction process as a result of its decision, especially since the ILEC may be in the best position – from both a financial and practical standpoint – to bring broadband to unserved portions of the state quickly and efficiently.

It is critical that the CAF, including the competitive bidding process, be administered by the Commission in a competitively-neutral manner. To that end, the Commission should adopt several proposals suggested in the *USF FNPRM* that would help ensure a level playing field for recipients of CAF support, regardless of whether they receive such support based on the forward-looking cost model or through the competitive bidding process. For instance, the term of support available through the competitive bidding process should be the same as that for ILEC providers that accept state-level support derived from the forward-looking cost model.[39] Likewise, the performance obligations and deployment deadlines for competitive bidders should be the same as

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[38] *Id.* at ¶ 1198.

[39] *See id.* at ¶ 1197.

those required of recipients of model-derived support.[40] There is no legitimate rationale for subjecting recipients of model-derived and auction-based funding to different support periods, performance obligations or deployment deadlines.

In addition, parties should be qualified as ETCs in the areas in which they intend to seek CAF support prior to participating in the auction process.[41] This requirement applies to incumbents and should apply to new CAF participants as well. As discussed above, the ETC designation process provides assurance to the public and the Commission that the recipient of the funding is financially stable and will use the funding consistent with the public interest requirements imposed by the Commission. Indeed, the need for ETC certification is even more compelling with respect to new CAF participants because they may have no or a limited track record of successfully providing voice or broadband service in hard-to-serve areas.

Finally, the Commission should not require CAF recipients to commit to financing a specified percentage of the build-out in CAF-supported areas with private funds.[42] Such a requirement would be extremely difficult for publicly-traded companies and may discourage participation by potential recipients that may actually be in the best position to extend service to the area for which CAF support is available based on their existing network deployment. While it is understandable that the Commission would want to ensure that CAF recipients have sufficient financial resources to meet their public interest commitments, as discussed above, the Commission has other tools that are sufficient to ensure compliance with its rules.

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[40] *See id.* at ¶¶ 1203-04, 1207.

[41] *See id.* at ¶ 1199.

[42] *See id.* at ¶ 1200.

III. CONCLUSION

For all of the foregoing reasons, the Commission should implement the CAF in a manner that is consistent with the arguments expressed herein and in ITTA's previous comments.

Respectfully submitted,

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